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RECIPROCITY WITH GERMANY

I

After many years of tedious talk about reciprocity, unaccompanied by action, the question has been presented in a new form. It has been forced upon an unwilling nation by the necessity of meeting in some way the threats of Germany to discriminate against our goods entering her ports. This has made it requisite to deal with the general reciprocity question. Such a necessity would probably have arisen in due time under any conditions. The German imbroglio is only the temporary and unessential form in which an issue of world-wide importance and of great national moment is presented. For this reason no answer can be finally given to the demands of Germany which does not in some measure commit us to the acceptance of a definite policy with regard to the other phases in which the question may offer itself. The decision to be made in dealing with the present situation will be the first step on a road that may lead to an entire change in our present commercial policy, and may force us to conclusions in tariff matters not now foreseen. This is why the German issue is more than a controversy over the rates of duty to be levied on certain articles interchanged between the two countries. The problem has grown complicated, and must be viewed historically if it is to be fully understood. In this paper is discussed the situation which has developed under the new German tariff act, with special reference to the United States. A

second paper will undertake to explain the elements of the problems with which Congress must deal in settling our commercial relations abroad, and to analyze the considerations affecting its different phases.

II

Our recent efforts at reciprocity with Germany date from the McKinley act. That measure provided, in section 3, for the free introduction of sugar, molasses, coffee, tea, and hides into the United States, in return for such concessions as might be deemed reasonable by the President of the United States, and authorized him to apply retaliatory duties on these products when imported from countries which declined to give us reciprocally equitable treatment. Under this provision, an agreement with Germany, bearing date January 30, 1892, was concluded. That government, in consideration of the concessions offered in the McKinley act—the one article that had much significance to Germany being sugar—agreed to give us the same terms of admission for our agricultural exports as were granted to Austria-Hungary. The articles on which we secured a reduction included cereals of various kinds, among them corn and wheat; meat products, except pork and bacon; most kinds of cheese, oleomargarine, flour, and certain live animals. On the free list were placed certain undesignated agricultural products, hides and skins, tan bark, and wool.

The status thus created continued until it was altered by the Wilson tariff act of 1894. Its effects, such as they were, will be reserved for discussion in a later paper. The Wilson act repealed the reciprocity section of the McKinley act, thus setting aside the commercial treaties, and restored the duty on sugar, which had been the chief reason for the acceptance of our offered reciprocity. Sharp protest was the result. While the Wilson bill was pending in the Senate, Germany, which was then feeling very keenly the embarrassments growing out of her sugar-bounty system, filed a protest at Washington against the policy proposed in re-establishing a duty on sugar. It was maintained that the proposed sugar tariff schedule would result in a practically discriminatory duty on sugar coming from Germany,

that would inevitably drive it from the market of the United States. The protest contained a distinct threat of retaliatory action. After the Wilson bill had become law, a second protest was handed to our secretary of state by the German ambassador. In this document the imperial government renewed its complaint of the duties levied on sugar, and declined to consider Germany's own export bounties on sugar as bearing upon the subject in any way. The chief complaint against the new tariff was that it violated the principles involved in the reciprocity agreement negotiated under the McKinley act. No attention was paid to the protest, and at about the same time the growing strength of the agrarian movement in Germany was directed toward the establishment of higher duties on American agricultural products imported into that country. Thus a tariff and commercial policy intended to be very unfriendly to us was inaugurated. It was not long before Americans dealing with Germany were made to suffer severely. American insurance companies operating in that country were attacked more or less covertly in legislation, and other methods of discrimination against us were adopted. This state of affairs, and our loss of ground in exports, went so far as to lead to serious proposals for retaliation—proposals of which President Cleveland took note in his annual message in 1895. The warning from the President and the pressure of other matters somewhat quieted the rising discontent, and no further steps relating to German trade were taken until after the passage of the Dingley act. Feeling in Germany, however, continued unfriendly.

The Dingley act, passed in 1897, partially returned to the reciprocity idea, but did so only in a very halting and hesitant way. It provided for the free admission of coffee, tea, tonka beans, and vanilla beans, and for the reduction to nominal amounts of the duties on argols, crude tartar or wine lees crude, brandies, champagne, still wines and vermouth, paintings and statuary, in return for reciprocal concessions to be made by the country receiving the reductions thus enumerated. Another section of the act also provided for the negotiation of reciprocity treaties with foreign countries, such treaties to require the action of the Senate before going into effect. It proved impossible to

induce any of the European countries except France to consider reciprocity treaties negotiated under the section providing for ratification by the Senate; but Germany accepted a commercial agreement by which she was given the reductions of duty which lay within the discretion of the President, as enumerated above. Germany had, some years before, negotiated agreements with seven European countries, whereby these countries were all given the advantage of a lower schedule of duties than that fixed for outside and non-treaty states. The commercial agreement with the United States in 1900 gave us the same advantages as were accorded to these countries. That agreement was subject to termination by either country upon three months' notice. A most-favored-nation treaty between the United States and Prussia, which had been concluded in 1828, and was still held to be binding upon the German Empire, placed us upon the most-favored-nation basis, terminable upon one year's notice. In this relative position we have continued until the recent alteration in our status.

III

Tariff dissatisfaction continued in Germany and the protective movement increased in strength during the years succeeding the passage of the Dingley act. From 1898 onward the imperial government was engaged in preparing new schedules of duties to take the place of those then in force. The commercial treaties negotiated in 1892 and 1893 were to last twelve years, and it was consequently designed to put the new tariff enactment into effect in 1906. March, 1906, was finally fixed upon as the date for beginning its application. Early in 1905 the process of concluding commercial treaties with a number of foreign countries was brought to a close, and such treaties were proclaimed with Russia, Austria-Hungary, Italy, Switzerland, Belgium, Roumania, and Servia. This made it certain that there would be a considerable group of trading countries which would be given the advantage of rates lower than the maximum, and made it incumbent upon countries which did not wish to be undersold, to look sharply to the possibility of securing equally favorable terms. The new tariff has been often described, but its main provisions

may be briefly sketched at this point. It was based upon a set of "general" rates enacted by the law of December 25, 1902. Lower than these were to be certain rates fixed through the medium of bargains with foreign countries. Whenever a set of rates differing from those already in existence was established with a country these rates were automatically extended to all other countries enjoying favored-nation relations with Germany. The rates of the general tariff were not reduced upon all commodities in the conventional tariffs established by negotiation. Such concessions as were actually made were to be granted only in return for reductions of like value made by the countries with which negotiations were carried on. The "general rates" referred to are also spoken of as the autonomous rates, while the conventional rates are frequently described as the minimum schedules, since they represent the lowest point to which duties are reduced by treaty. In the table on pp. 326, 327, a comparison is drawn between some important items in the old schedule of duties applied to most favored nations, the new schedules applying to such nations, and the new maximum or autonomous rates. In the first column are shown the approximate values of goods in each of several great classes passing from the United States to Germany at the time when the intention to enforce the new tariff policy was first definitely announced.

As the new commercial treaties already spoken of were each to last for twelve years dating from March 1, 1906, the new arrangement implied the continuance of the schedules established under it until the close of the year 1917.

The announcement of the actual intention to open a tariff war with the United States was received with very little equanimity by American exporters. Not only were the new rates of duty as proposed such as to place us at a material disadvantage in a trade where we needed all the openings we could get, but it was also true that our trade relations with the German Empire had greatly expanded since the older days of McKinley and Dingley reciprocity. There was a demand for far greater care in shaping our tariff relations with the empire than had formerly existed, for there were many more interests, small and great,

that might be helped or hindered by the duties to be adopted. There had been a growth of German exports from all foreign countries, between the years 1891 and 1904, from about 756 million dollars to about 1,243 millions, or in the neighborhood of 65 per cent. Imports from Germany to this country had grown from 97 millions in the year 1891 to about 109 millions in 1904, or about 12 per cent. Exports from the United States to Germany had increased during the same years from 93 millions to about 215 million dollars, or about 131 per cent. During the fiscal year 1904 our chief exports to Germany were: unmanu-

TABLE I

PRINCIPAL ARTICLES IMPORTED FROM THE UNITED STATES INTO GERMANY IN THE CALENDAR YEAR 1904 AND RATES OF DUTY UNDER OLD TARIFF OF GERMANY COMPARED WITH THE AUTONOMOUS AND CONVENTIONAL TARIFF RATES WHICH WENT INTO EFFECT March 1, 1906. (From *Blue Sheet* 288, U. S. Bureau of Statistics.)

Articles Imported into Germany from U. S.	Value in Million Dollars	Old Tariff Rates on Imports from Most Favored Nations	New Autonomous Tariff Rates	New Conventional Tariff Rates
		Rate per 100 lbs.		
Total imports from U. S....	\$225.0	.....	....	....
Animal products—				
Bacon.....	.4	2.16	3.89	....
Beef fresh.....	.5	{ 1.62	4.87	2.92
Beef simply prepared.....		{ 1.84	6.48	3.78
Intestines and other parts	2.5	Free	Free	Free
Lard and oleo oil	19.8	1.08	1.36	1.08
Tallow.....	1.4	.22	.27	...
Oleomargarine, butter....	(h) .2	1.73	3.24	2.16
Breadstuffs—				
Corn	(a) 4.6	(b) .10	(b) .31	(b) .19
Rye.....	(c)	(b) .21	(b) .42	(b) .30
Wheat.....	6.4	(b) .23	(b) .49	(b) 0.36
Wheat flour.....	(h) .3	(d) 1.55	(d) 4.00	(d) 2.16
Copper, crude (bars, ingots, etc.).....	28.6	Free	Free	Free
Cotton, unmanufactured, and cotton waste.....	82.3	Free	Free	Free
Cycles and parts of.....	(e)	2.60	16.19	10.79
Fertilizers, phosphate of lime	3.6	Free	Free	Free

(a) The value of corn imports was nearly 25 millions in 1900.

(b) Per bushel.

(c) The value of rye imports fluctuates greatly.

(d) Per bushel.

(e) The value of our cycle exports to Germany has declined from over \$1,000,000 in 1899.

(h) Imports into Germany from the United States during Calendar Year 1903.

TABLE I—Continued

Articles Imported into Germany from U. S.	Value in Mil- lion Dollars	Old Tariff Rates on Imports from Most Favored Nations	New Autono- mous Tariff Rates	New Conven- tional Tariff Rates
		Rate per 100 lbs.		
Fruits—				
Dried.....	4.6	.43	1.08	.43
Apples, fresh, not packed .				
Sept. 25–Nov. 25.....		{ Free	Free	....
Nov. 26–Sept. 24.....		{ Free	.27	....
Packed.....	.6	{ Free	1.08	....
Sept. 1–Nov. 30.....		{ Free	....	Free
Dec. 1–Aug 31.....		{ Free	....	.22
Packed.....		{ Free	....	.54
Oranges.....	....	.43	1.30	.35
Furs and fur skins.....	1.6	Free	Free	Free
Hides and skins, cattle.....	1.1	Free	Free	Free
Iron and steel manfrs. of machinery—				
Agricultural.....	1.5	.32–.86	.43	.43
Other N. E. S.....	.8	.32–.86	.32–.16	.32–
Sewing-machines without frames.....	1.2	2.60	3.79	....
Typewriters and adding machines.....	(h) .4	2.60	6.49	....
Leather and manufactures of leather, half or entirely dressed in pieces of over 3 kilos, each.....		{ 1.94	3.24	3.24
Leather glove.....	.9	{ 3.89	3.89	....
Leather patent.....		{ 3.89	5.40	....
Boots and shoes.....	(h) .5	(i) 5.41–7.02	(f) 9.19–19.47	(f) 6.49–9.74
Naval stores.				
Turpentine and rosin, oils, spirits of turpentine....	6.8	Free	Free	Free
Oil cake.....	5.3	Free	Free	oFree
Oils—				
Mineral.				
Refined.....	14.5	.65	.65	.65
Lubricating.....	1.7	1.08	1.08	.65
Cotton seed—				
In barrels denatured.....	2.7	{ .43	.54	...
In barrels fit for consump- tion.....		{ .43	1.35	....
In bottles fit for consump- tion.....		{ 2.16	2.16	....
Paraffin, stearic acid, etc....	.8	1.08	1.08	1.08
Tobacco leaves.....	1.9	9.19	9.19	....
Wood, for building and in- dustrial purposes—				
Soft.....	6.4	.....	(g) .29–1.79	(g) .17–1.03
Hard.....		(g) .29–1.14	(g) .43–2.38	(g) .26–1.37

(f) Rate decreases as weight of boots and shoes per pair increases.

(g) Per cubic meter.

(h) Imports into Germany from the United States during Calendar Year 1903.

(i) Driven by motive power.

factured cotton, 109 million dollars; breadstuffs, over 16 millions; provisions, about 21.5 millions; manufactures of copper, 11.5 millions; mineral oils, 9 millions; iron and steel manufactures, about 5 millions; unmanufactured tobacco, about 5 millions; wood and its manufactures, about 4.5 millions; fertilizers, about 2.5 millions; and agricultural implements about 1.5 millions. During the same year our chief imports from Germany were: chemicals, over 16 million dollars; cotton manufactures, over 14 millions; iron and steel manufactures, about 6.5 millions; manufactures of silk, about 6 millions; toys, 4.5 millions; earthen and chinaware, 4.75 millions; manufactures of wool, about 3.33 millions. We had during the year 1903 held first place among the nations from which Germany received her imports, and third rank among the countries to which Germany shipped her goods. Considering the foreign commerce of the United States as a whole, Germany, stood second only to Great Britain in the quantity of our exports and imports.¹

IV

It was plain that tariff warfare of unusual severity and extent was within the range of immediate possibility. Yet our representatives at Washington were inclined at first to regard the whole tariff position of Germany as mere bluster. They altered their attitude when the German embassy assured them that the commercial arrangement with the United States would be terminated, upon due notice, in time to apply to us the new rates from and after March 1, 1906, should no new agreement be entered into. In view of this vigorous position on the part of Germany, State Department officials deemed it worth while to look with care into the German demands during the year 1905.

These negotiations were privately carried on, with growing intensity and insistence on the side of Germany, and with increasing perception upon our own that the desires of that country were of a kind which we could not well resist. The demands of Germany were of two general sorts. In the first place, it was urged that there should be a revision of the most-favored-

¹ Bureau of Statistics, *Blue Sheet* 283.

nation clause in our commercial treaty with Prussia, and a subsequent alteration of our whole most-favored-nation policy. Secondly, it was insisted that there be fresh and much more far-reaching concessions than could be had under the narrow and deceptive provisions of section 3 of the Dingley act. It was recognized that the latter concession, and possibly the first, could not be made without consultation with Senate leaders and without final action by the Senate under our constitution. It was also understood that action must in all probability be had from the House of Representatives in the event that reductions of duty were to be granted, the House having shown in the past a disposition to demand a share in the making of reciprocity treaties involving genuine changes in the tariff. On our side, it was finally and reluctantly recognized that a serious situation had been encountered, and that the prospect of staving off action could not be considered good. Negotiations continued throughout the summer and autumn, but when Congress arrived, there began to be strong pressure for some results. Germany plainly feared that our authorities were scheming merely to evade action. Anxious not to be deceived in this way, German authorities finally notified this government that the new maximum rates would go into effect on the first of March. The situation became acute. Our administrators endeavored to see what could be done to avert the threatened discrimination and gain time for molding public sentiment into harmony with the German demands. American traders engaged in exporting and importing also took the public sentiment, in harmony with the German demands. American traders engaged in business with Germany also took the alarm, and through committees of the New York Merchants' Association sought to bring greater pressure to bear upon the administration in Washington. Secretary of State Root and the President became finally convinced of the necessity of action. The German embassy presented to the State Department, in the early winter of 1905, certain demands which must be granted as the price even of a temporary stay of proceedings and the transitory extension to the United States of the benefit of the lower rates of the new tariff régime. Knowing that it was impossible

for the President to change any duties, and knowing also that a complete reversal of our most-favored-nation policy could not be had from the State Department in so brief a time as was offered, the Germans wisely confined themselves to requesting for the present no more than certain changes in our mode of administering the customs tariff act. Customs methods at New York and elsewhere had long been obnoxious to German exporters and to American importers. It was reasoned with force that, if the administration really felt the cogency of the German tariff argument, it could well show this feeling in a practical way by altering the objectionable features of administration which hampered trade, pending the time when it could ascertain whether Congress would consider the reduction of duties. The points on which concessions were asked of the administration were as follows:

1. The holding of hearings in customs cases in public.
2. The modification of current methods of assessing the dutiable value of German goods entering our ports.
3. The grant of permission to the importer to change the stated value of his goods after their arrival and before finally declaring them.
4. The lightening of penalties for undervaluation of imported goods presented for appraisement.

V

In order to get the full bearing of the changes in customs administration recommended by the German importers, it will be worth while to review in brief fashion the mode of proceeding hitherto employed in the establishment of dutiable values. When goods arrive in the United States, they are passed upon by an appraiser who assesses the dutiable value upon which the tariff rates are to be levied. If the importer or shipper is satisfied with that valuation, he pays his duties and removes his goods. If he feels that the valuation is unjust, he has the right of appeal to the so-called Board of General Appraisers, which is a tribunal created for the purpose of ascertaining dutiable value. When such a case is thus appealed, the proceedings are had before a single gen-

eral appraiser, and a notice is given that it will be heard at a specified time. At this hearing the importer may present himself either in person or by counsel, and may offer such argument and introduce such witnesses as he chooses in order to show what is the value of the goods abroad and the true entry value of the merchandise. At a later hearing the general appraiser ordinarily calls in the local appraiser from whose decision appeal has been made, and secures his statement as to the reasons for retaining the value he has fixed. If necessary, the general appraiser who has the case in charge may then call in by subpoena such expert or trade witnesses as he may desire for the purpose of collecting testimony as to the true trade value of the goods in dispute. The general appraiser then, after a personal examination of the goods, fixes their value. The importer, if still dissatisfied, has a further right of appeal from the decision of the general appraiser in the case to a board composed of three general appraisers. The importer receives notice of the hearing that is to be held, and may be present himself with counsel, and may suggest to the board certain witnesses in the trade whom he wishes to have summoned. After due hearing of the importer, the witnesses, and the counsel, the Board of Three usually sends for the original examiner and for the general appraiser who fixed the value of the merchandise, and hears the testimony of these officers. They may also get other witnesses, and they have before them the reports of special agents abroad rendered confidentially. The Board of Three then fixes the valuation of the goods for dutiable purposes, and this is a final decision. Under certain conditions, however, an appeal to the federal courts may be taken from the decision of the Board of Three.

Importers have complained of this mode of proceeding on the ground that it did not give them a sufficient opportunity to present their views on any given case. They have urged that it would be fairer if the hearings before all appraisers could be open to them and to the public, and that, should this step be taken, it would result in giving them a chance to rebut testimony now offered in secret and not capable of answer because of their ignorance of the claims that are made. It has been

answered, in reply to this line of argument, that no other practice than that now pursued would be possible, because of the fact that importers would be able to ascertain the methods employed and prices paid by their competitors. It has been maintained that if they were given access to the hearings, they would, when starting a new line of business, bring over a small consignment of goods which would be undervalued with set intent. The result would be to make revaluation necessary, and in the course of the hearings the appraiser would produce the invoices of their competitors. These would at once show them where they ought to go for their goods in the future, as well as the prices which were being paid for such goods by others. Further, it has been claimed that open hearings would necessarily result in a refusal on the part of the larger buyers and importers to testify against the small ones, because, were they to give such testimony, they would be marked men in the trade and would incur the enmity of their competitors. Finally it has been urged that it is always possible to buy any class of goods at export prices in New York—a practice which would establish a low level of values were there no means of checking the values by the private testimony. The result of such open hearings, therefore, would be, according to that view, to give the dishonest importer an unfair advantage over the honest man who wanted to do a legitimate business, and who was willing to declare his values in the regular way and pay tariff accordingly. Importers have not concerned themselves much on these scores. They have suffered from extreme and severe decisions by the Board of General Appraisers rendered on secret evidence, and they have desired an opportunity to be confronted with the witnesses against them. They have frequently demanded such concessions, and the coming-forward of the German tariff discussion merely gave them a chance to press their case once more, the majority of those interested being more or less engaged in trade with Germany.

VI

These proposals for customs reform were met with opposition from two sources. Sundry congressmen promptly exerted

themselves to make matters worse. A very popular plan suggested in the House of Representatives was to pass an act making the Dingley rates the minimum and assessing maximum rates 25 per cent. in excess of the Dingley level upon all commodities coming from countries which discriminated against our exports to them. This was described by its authors as a means of "making Germany sick of the maximum-and-minimum tariff scheme." It found its best-known expression in the so-called McCleary bill. For a time the plan seemed to stand an excellent chance of passing the House of Representatives. The principle of bluster was generally approved, and in the Senate even the ancient tariff veteran Allison said that the McCleary plan was an "excellent thing to talk about." Then came a sudden change. A few New England representatives from districts largely interested in textiles were called home by telegram and forced by their constituents to hear reason. It was explained to them that a 25 per cent. increase in the duty on German chemicals and dye-stuffs would make it impossible for the mills to do business and was already unsettling trade. The representatives went back to Washington, told their story, and the plan was promptly though regretfully "pigeonholed." Congress had done what it could, but had not gone far.

A second source of opposition to the demand of the importers was found at the Treasury Department. All of the points raised in the demand for modification of customs administration of course lay within the jurisdiction of the Treasury, and could be acted upon by the State Department only through agreement. When the demands were presented to Secretary Shaw, difficulty was at once encountered. Mr. Shaw was then in the full excitement of the chase for the presidential nomination, and was asserting and reasserting his devotion to the protective system. He saw in the requests of the Germans an attempt to sap the foundations of that sacred system, and he proceeded to "view them with alarm." Particularly he objected to the plan to grant open hearings in customs cases, protesting that such a plan would result in preventing the Treasury from ever getting testimony of the kind necessary to convict importers of undervaluations. Such

testimony as to the foreign values of goods and the like would never be given by the representatives of important houses having it in their possession, he contended, unless they were assured that under no circumstances would their identity as the source of the information be divulged. This could never be the case if open hearings were to be granted. The collapse of the congressional opposition naturally weakened Secretary Shaw and his backers who were opposed to making peace with Germany, but they stood firm until the President began to be restive under the prolonged delay and resolved to look into the matter himself. At a White House conference in February, 1906, the importers stated their case plainly to the President, Secretary Root, and Secretary Shaw, and received a practical promise of relief.

Secretary Shaw had the acumen to understand when he could go no farther, and he finally accepted the inevitable. On February 28 he issued an order addressed to the president of the Board of General Appraisers in New York. In this order he used the following words:

You are hereby directed that in reappraisement cases the hearings shall be open and in the presence of the importer whenever, in the judgment of the board, the public interests will not be prejudiced thereby.²

A still more important concession, from some points of view, was contained in an order addressed to special Treasury agents in Germany dated February 28, but not made public until March 7. This related to the conditions under which market value was to be ascertained in making appraisement of goods upon importation, and read as follows:

In conducting investigations for purposes of discovering market value or cost of manufacture of merchandise produced within your district, you are directed first to confer with chambers of commerce and other trade organizations, and to report to this department all information by you derived from these sources, together with price lists submitted and approved by such organizations.

A general order addressed to all consular agents abroad was also made and sent out by the department on March 7 (under date of March 5). It read as follows:

Invoices of merchandise purchased for export to the United States must

² Treasury Decision 27164.

be produced for certification to the consul of the district at which the merchandise was purchased, or in the district in which it was manufactured, but as a rule a consular officer shall not require the personal attendance at his office of the shipper, manufacturer, owner, or his agent, for the purpose of making declarations to invoices, but he shall certify invoices sent to him through the mails or by messenger. To conform to the statute which requires that merchandise shall be invoiced at the market value or wholesale price of such merchandise as bought and sold at usual wholesale quantities at the time of exportation to the United States in the principal markets of the country whence imported, consuls will certify to invoices the additional cost of transportation from the place of manufacture to the place of shipment whenever the invoices presented to be consulated in a country other than the one from which the merchandise is being directly exported to the United States.

When the invoice and declaration are received by the consul, it is his duty to examine carefully each item and satisfy himself that it is true and correct.

In aid of his examination it shall be the duty of each consular officer to confer with the official chambers of commerce and other trade organizations in his district, and he shall report any and all written communications from such commercial bodies and trade organizations that may be submitted to him in writing, together with all schedules of prices furnished him officially for that purpose; and the consul is authorized in his discretion to call for the bills of sale of merchandise purchased for export to the United States, to inquire into the cost of production of merchandise not obtained by purchase, to demand samples, and, if the conditions require it, to examine the entire consignment. Whenever an invoice is offered for certification which covers the consolidated shipments consisting of the productions of different manufacturers, the consul may demand the submission of the manufacturers' bill relating thereto. Even when the merchandise has been purchased for export and the invoice truly sets out the price paid, the consul should ascertain whether the price represents the market value of the goods.

These orders, taken together, introduced a decidedly radical change into the existing methods of valuing goods and of making appraisements. In addition, the President issued a proclamation on February 27, noted also by Secretary Shaw in an order published March 7, whereby the reductions of duty specified in the Dingley act were renewed. Taken all in all, the concessions made were considered by the German government sufficient to warrant the order that the minimum rates of the German tariff as established in treaties with the seven countries already named be extended to American products entering that country. The order was to continue to June 30, 1907, so that about fifteen

months were thus granted to the United States government to make its preparations and secure the passage of legislation for the establishment of relations with Germany on a permanent basis. This, however, was conditioned upon action by the United States government looking toward immediate legislation by Congress granting further concessions with reference to the administration of the customs service. There is some difference of opinion as to whether our administration promised practically that there would be such legislation or held out the hope that something of the kind would be done, or whether it merely promised to recommend to Congress that such action be taken. The former interpretation is that which has been placed upon the transaction by various German authorities, but the latter promise is all that American authorities are willing to admit.

VII

As soon as it was seen that the administration at Washington desired some real legislative action with reference to the German situation, and that Secretary Shaw had been obliged to yield, congressional leaders agreed to take up the matter of further reform, for consideration. They appointed a time for hearings before the Ways and Means Committee at which all bills dealing with the amendment of the customs administrative act should be discussed. These hearings came on during the last week in February (1906), and there were present representatives of the New York Merchants' Association standing for the importing interests, and Secretary Shaw, as well as some of the Board of General Appraisers standing for the government. Incidentally the textile and other interests opposed to the modification of the act were present by representatives.

The committee was first addressed by Mr. W. Wickham Smith in behalf of the German exporters and New York importers. Mr. Smith advocated the changing of the customs administrative act in four or five important respects, the chief of which were as follows:

1. A change whereby consignees of imported merchandise should be allowed to make additions to the invoice value of their merchandise at the

time of entry—a right which under the present law is confined to the owners of merchandise.

2. A change whereby a margin of 5 per cent. for undervaluations would be allowed to importers without the imposition of penalty.

3. An amendment whereby penalties for the undervaluation of imported goods should not be imposed upon any article on which the amount of the duty imposed by law on account of the appraised value did not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value.

4. An amendment permitting the secretary of the treasury to remit penalties for the undervaluation of goods whenever such remission should to him seem to be wise or expedient.

5. The authorization of open hearings before the Board of General Appraisers in customs cases.

Secretary Shaw, in reply to Mr. Smith and to other representatives of the interests desiring modification of the tariff, strongly rebutted certain of the suggestions and recommended the grant of a few points only, coupled with special changes of his own planning, in the law as it then stood. The principal change suggested by the New York interests and objected to by the secretary of the treasury was that by which it was proposed to establish open hearings. Secretary Shaw was extreme in his denunciation of the idea of open hearings, and of the reasons which prompted the importers to ask for them. He, however, admitted that, while the customs administrative act needed little if any change, it might be well, in the interest of peace with Germany, to yield the following points:

1. A change permitting the consignee receiving consigned goods to add to the consigned valuation in order to make market value.

2. A conditional concession that no penalty should be imposed for undervaluations when such undervaluations were less than 5 per cent.

3. A change whereby the secretary of the treasury should have power to remit penalties upon the next 5 per cent. of undervaluation, provided the Board of General appraisers should certify that in their opinion such undervaluation was done in good faith and grew out of a difference of opinion as to the true market valuation of goods.

Secretary Shaw further recommended some changes in customs administration which had no necessary bearing upon tariff relations with Germany, such for instance as the transfer of

customs cases to a higher court whose decree should be final in instances where importers were not satisfied with the findings of the Board of General Appraisers, the appointment of customs solicitors, and other points in which the importers were greatly interested, though without special reference to German trade.

It is thus seen that the chief difference of opinion at these crucial hearings lay in the fact that, whereas the importers desired to have market value determined in some fairer way than at present, Secretary Shaw was unwilling to see present methods modified; and whereas the importers desired to have the hearings in customs cases take place in public, the secretary was not willing to have the existing plan of secret hearings infringed upon.

VIII

In accordance with the practical instructions thus presented by Secretary Shaw at the urgent request of the administration, Chairman Payne of the Ways and Means Committee prepared, and on May 28, 1906, introduced in the House, a bill to amend the Customs Administrative Act. This bill embodied most of the suggestions made by Secretary Shaw. It was speedily taken in hand by the committee, and was altered in a few particulars, though none of them was vital. The bill was then reported to the House on June 3, 1906.

The main provisions of this "Payne bill" were found in amendments to sections 5, 7, 12, 13, 14, and 15, of the Customs Administrative Act of June 10, 1890, as amended by the act of July 24, 1897. These amendments went in great detail into the methods of making declarations of merchandise values in the case of imported goods, and into the modes of assessing dutiable values. The changes which were introduced into existing law were chiefly those providing for adding to invoice values, the reduction of penalties for undervaluation, and the grant of a 5 per cent. margin for undervaluations. In certain ways there had been an effort to "trim" the suggestions of Secretary Shaw by omitting changes on which the Germans laid considerable stress. These efforts were of course speedily noted, and the alterations caused dissatisfaction both among German representatives and

New York importers. Various members of the Ways and Means Committee expressed in private the opinion that the act was equivalent to the granting of a 5 or 10 per cent. reduction in tariff duties, inasmuch as the German exporters would uniformly undervalue the goods, and would do it so skilfully that it would be impossible for the Board of General Appraisers to detect the frauds. Other extreme talk of the same kind was heard, and from the outset it was plain that the action taken in reporting the bill was largely *pro forma*.

There was a flurry of excitement among Congressmen representing special interests when the Payne bill was reported by the Ways and Means Committee. Speedily, however, the word was sent out that the reporting of the bill meant nothing, and that an arrangement had been arrived at with the Senate Finance Committee whereby the latter would "pigeonhole" the bill when it reached the Senate. It was further admitted that it was the intention of the "leaders" merely to press the bill through the House in order to placate Germany, and then to send it to the Senate to be killed. This assurance was satisfactory to the majority of Congressmen, but there were some who wanted to make assurance doubly sure. With this end in view, it was determined to hold back the bill until a few days before the close of the session, and then to pass it at a late date when it could not possibly be acted upon by the upper chamber owing to the lack of time. This expedient was resorted to. The Payne bill was made the unfinished business for the last few days of the session at evening meetings, and a number of tireless Congressmen were scheduled to fill the whole time with orations on the tariff. Campaign speeches of the familiar sort were delivered in such numbers as wholly to occupy the time allotted for debate. No attention whatever was given to the bill itself. Few persons understood its technical contents, and still fewer were disposed to discuss them. Thus the measure went through the House and passed to the Senate Committee on Finance, where Chairman Aldrich, according to expectation, pigeonholed the whole matter, and without the slightest explanation or apology.

IX

During the summer of 1906 little was heard of the German tariff question. Occasionally the question was revived by some German visitor; but, in the main, American statesmen seemed to be content with the fact that for the time we had done as well as could be expected by getting the minimum rates of the German schedules, and at the same time had given relatively little in return. A rude shock to the self-gratulatory attitude was administered when it was discovered late in the summer that Germany had concluded treaties with other countries. These states had been granted new low rates of duty which automatically extended themselves to the original countries entering into treaty relations with Germany. To this rule the United States was made an exception, although we had previously succeeded in getting as good rates as were then given to any nation. The treaties which came to the notice of our State Department authorities during the summer of 1906 were concluded with Sweden and Bulgaria. They contained but few articles in addition to those already specified in the older treaties, and these few were not of very great significance to the foreign trade of the United States. The German authorities refused to extend these few more favorable rates to our exports, on the ground that the most-favored-nation interpretation which had been complained of, but not rectified by the United States, was still at issue, and no satisfactory interpretation or accommodation of view arrived at. For this reason, it was argued, there was no ground on which the United States could demand the application of the rates granted in the two new treaties, although they were automatically extended to the other seven countries. This was a point of little immediate importance, but of great ultimate significance. It implied that, no matter what tentative concessions we might succeed in getting from Germany either through reciprocity treaties, tariff legislation, or in other ways, they would be likely at any moment to be overthrown by agreements with other countries which would leave us in a position of differential disadvantage. That some action be taken toward ending the threatened tariff imbroglio was now doubly urgent. In this emergency, the stock method

of appointing a commission was resorted to. We of course had thoroughly learned what the German government wanted, but a commission was none the less determined on. President Roosevelt designated three members of this body and ordered them to discuss the tariff relations between the two countries with a board of tariff experts representing the German government. The three envoys selected for this duty were Mr. S. N. D. North, of the Census Bureau, Mr. N. I. Stone, of the Bureau of Manufactures; and Mr. E. P. Gerry, of the Treasury Department. Mr. North was to be chairman of the commission. He had served as secretary of the National Association of Wool Manufacturers and as a member for one year of the Industrial Commission. He had also, it is understood, drafted the wool and woolens schedules of the Dingley act. Mr. North was already, on record as opposing one of the principal demands of the Germans—that of open hearings in customs cases.³ Mr. Gerry had had long service in the customs division of the Treasury and was familiar with the administration of the customs. Mr. Stone had for some years been tariff expert, first in the Bureau of Statistics of the Department of Commerce and Labor, and later in the Bureau of Manufactures of the same department. He had accompanied the body of commissioners which went to the conference of South American republics at Rio in the summer of 1906. The commission organized officially in Germany, arriving there toward the close of the year 1906, and met a board composed of nine well-trained experts who had been designated by the German government to talk over the situation with our commissioners. Debates continued for some two months. It had been anticipated that the report of the commission would be returned to this country in time for action by Congress, or at all events for discussion with the leaders of that body. Why this was not done has been a matter of interested speculation. The fact remains that the report was not received until toward the end of February, and even then was incomplete. There was no chance of laying the subject before Congress until the opening of a new session. This report is understood to contemplate two

³ Hearings before Ways and Means Committee February 23, 1906, p. 15.

distinct lines of procedure. (1) It proposes the continuation of the present tariff *modus vivendi* for one year from June 30, 1907, in consideration of further changes in customs administration which can be made by the order of the secretary of the treasury. These changes carry somewhat farther the ideas involved in the earlier administration concessions. They add to these permission to use export prices as a basis of valuation where commodities are not commonly traded in or quoted on the German market. They further alter the status of the secret and confidential Treasury agents heretofore employed by the department, and they carry farther and conform to the principle of open hearings in customs cases. The reductions of duty heretofore granted in accord with Section 3 of the Dingley act are renewed, and to the commodities already thus included is added the item of champagnes and sparkling wines. In return we receive the rates of duty already conceded to the seven enumerated countries already mentioned, but not those granted to the two countries with which later agreements were concluded.⁴ (2) The second proposal of the report (not yet made public) is understood to be the adoption of a reciprocity treaty with Germany, in which certain rates of duty will be conceded on either side. Fuller discussion of these matters must be deferred to another place.

X

It is thus seen that in our latest tariff negotiation we have reached the usual reciprocity impasse. Two or three years of work have been required to bring the German problem fairly before the country, and even now there is but scant public interest in the situation. What has been accomplished thus far may be summarized as follows: (1) Changes of tariff administration have actually been made for the purpose of removing some of the most oppressive and obnoxious features of our customs administrative system. (2) Further changes and modifications of the same sort will be applied from the date of the proclamation. (3) The reductions of duty permitted by the Dingley act have been

⁴ The text of the agreement is appended to Part II of this paper, which will appear in the July number of the *Journal*.

made applicable to German exports to the United States, as they were, under the old tariff schedules, by the agreement of 1900. (4) A tariff commission sent to Germany has brought home a tentative reciprocity treaty. In return for these concessions, (1) we have secured a fifteen months' extension of time before the application of maximum rates upon our exports to Germany; (2) we have now the privilege of securing to ourselves a year's further extension of the lower rates already offered us by granting the additional changes in customs administration to which reference has already been made with the probable power of securing further renewals from year to year on a temporary basis. The broad question of reciprocity with Germany upon a basis which will put to rest all disagreement for a period of years to come remains. What will be done with it?

We have thus far shown anything but a straightforward point of view. We put off any decision with reference to the German demands as long as we could. We pretended to consider retaliation upon German imports, and failed to adopt such a plan only because of the demands of special home interests which were insistent against a scheme likely to increase their cost of production. Our Treasury Department refused to make changes in administration which were evidently feasible, on the ground that they were impossible; but then, upon feeling the spur of necessity, it introduced some of the very things that had been pronounced, but a week or two earlier, to be out of the question. We agreed to urge upon Congress the adoption of a thorough measure reforming our system of customs administration, but contented ourselves with merely suggesting its passage, while Congress took pains to put it through the lower house only, quietly leaving it to die in the upper. Lastly, we sent abroad a tariff commission which was to report before the close of the congressional session 1906-7, but allowed its work to be delayed in an unexplained way, so that its return with recommendations and a report was too late to permit the matter to come before Congress at all.

For the present we have in view merely an extension of existing tariff relations at the cost of certain techni-

cal administrative concessions of our own. This up to date is the result of the tariff commission's work. It is fair to ask whether this record does not hopelessly put aside all possibility of immediate reciprocity with Germany, and does not practically condemn us to a continuation of relations with that country upon relatively unfavorable terms. Apart from this question, the record is discreditable for its lack of sincerity and frankness. Yet there are some factors in the situation which hold out the hope of ultimate rectification of the unsatisfactory status now existing. It is far from clear that this rectification will come through the passage of a reciprocity treaty with Germany. Of late there have been indications that, even if the Senate or Congress would consent to the passage of such a treaty, there might be a prospect of resultant difficulties with foreign countries other than Germany. It is entirely possible that much better results might be had from an enlargement of the list of commodities contained in section 3 of the Dingley act as the legitimate basis upon which the President may bargain in the effort to get tariff concessions from foreign countries. There is also a broader aspect of the reciprocity question as now presented. This is whether it is wise to injure the prospects of tariff reform by binding ourselves in any way whatever to a foreign country, thereby hampering our movements when we come—if we ever do—to the reconstruction of our antiquated and unjust schedules. Behind these questions is the large problem, whether there is a real advantage in reciprocity on any terms; whether, in short, it is not better for us to take our chances as does England, establishing what seem to us to be fair tariff schedules, and leaving outsiders to shape their own duties in any way they may see fit. These problems it is proposed to discuss in another paper.

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